

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Structure and Practices of the Video Relay) CG Docket No. 10-51
Service Program)
)
Telecommunications Relay Services and) CG Docket No. 03-123
Speech-to-Speech Services for Individuals)
with Hearing and Speech Disabilities)

To the Commission:

PETITION FOR WAIVER

ASL Services Holdings, LLC (“ASL/Global VRS” or “Company”), pursuant to the Section 1.3 of the Commission’s Rules⁴ and the Commission’s June 10, 2013 *Report and Order and Further Notice of Proposed Rulemaking* in the instant proceeding,⁵ hereby requests a temporary one year waiver of the daily compliance measurement provisions adopted in Section 64.604(b)(2)(iii)(A)(2) and (3) of the Commission’s rules⁶ governing Speed of Answer (“SoA”) requirements for Video Relay Service (“VRS”) providers. ASL/Global VRS also seeks waiver of the applicable daily penalty assessment for SoA non-compliance. The Company’s request is predicated on the severe financial costs and risks posed by the daily SoA non-compliance measurement methodology to the Company’s operations. In the absence of long standing historical call data available to other providers, the potential for unprecedented call volume increases, and the Company’s limited experience under a changed regulatory framework, daily

⁴ 47 C.F.R. §1.3.

⁵ *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 13-82 (June 10, 2013) [2013 VRS Reform FNPRM].

⁶ 47 C.F.R. §64.604(b)(2)(iii)(A)(2) and (3).

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compliance measurement and potential non-compliance penalties otherwise jeopardize ASL/Global VRS' financial viability.

I. Introduction

ASL/Global VRS respectfully requests a temporary, one year waiver of the daily SoA compliance measurement and applicable daily penalty assessment for non-compliance⁷ to be granted on or before January 1, 2014. The Commission has moved to harmonize VRS SoA standards with those of other relay services, while also introducing a new daily compliance measurement effective January 1, 2014. Today, ASL/Global VRS' operating experience is similarly situated to that of incumbent providers at the time the original VRS SoA requirements were adopted in 2005. However, the "decade of experience" on which the daily compliance measurement was based⁸ does not therefore extend to ASL/Global VRS. Daily SoA compliance measurement and attendant potential penalties impose an untenable financial burden and operational risk to ASL/Global VRS unless waived.

ASL/Global VRS is a recent provisionally-certified Telecommunications Relay Service Fund ("Fund") eligible provider. As a relatively new provider, the impact of the Company's projected growth, the resulting unpredictable calling volume, limited operating history, and recent regulatory reforms adopted by the Commission, represent significant daily SoA compliance challenges. The newly adopted daily SoA compliance measurements and the resulting risk of cumulative reimbursement withholding during unprecedented high and incalculable calling volume days ultimately jeopardizes the Company's operations unless waived.

⁷ 2013 VRS Reform FNPRM at footnote 312. "Since VRS speed of answer compliance will be measured on a daily basis, penalties for violating this rule may include full-day reimbursement withholdings on those days when VRS speed of answer requirements are not met."

⁸ *Id.* at para. 139.

The requested temporary waiver will enable collection and analysis of call distribution data under the current monthly SoA calculation methodology and TRS Program reforms. A grant of this waiver request will enable ASL/Global VRS to ensure daily SoA compliance upon expiration of the requested waiver without assumption untenable risk or cost. The Company's request for waiver has no impact on – and is entirely transparent to – the Company's subscribers and the public. And a grant of the Company's waiver request is entirely consistent with the time accorded to incumbent carriers to develop demand data since 2005. In support of its Petition, ASL/Global VRS states as follows.

II. The Basis for Commission Adoption of a Daily SoA Measurement Does Not Account for ASL/Global VRS' Recent Experience as a Fund Eligible Provider or Its Ability to Comply With the SoA as Measured Monthly.

The *2013 VRS Reform FNPRM* adopted a phased-in reduction to the SoA mandatory minimum standards for Video Relay Service ("VRS") providers.⁹ This phased-in SoA reduction, codified at Section 64.604(b)(2)(iii)(A)(2) and (3)¹⁰ of the Commission's rules, establishes that:

- (2) By January 1, 2014, VRS providers must answer 85% of all VRS calls *within 60 seconds, measured on a daily basis*; and
- (3) By July 1, 2014, VRS providers must answer 85% of all VRS calls *within 30 seconds, measured on a daily basis*. Abandoned calls shall be included in the VRS speed of answer calculation.

Despite the *phased-in* six month reduction in SoA times from 120 to 30 seconds, the Commission imposed an *immediate* change in SoA compliance measurement from a monthly to daily measurement effective January 1, 2014.

In adopting the daily SoA compliance measurement, the Commission justified the daily "measurement window" on two factors: 1) the more than a decade of experience that

⁹ *Id.* at para. 141.

¹⁰ 47 C.F.R. §4.604(b)(2)(iii)(A)(2) and (3). Emphasis supplied.

providers have had in providing Fund-compensated VRS; and 2) that providers are “largely meeting” the thirty second SoA wait time metric:

Measurement window. ... Given that providers now have more than a decade of experience managing CA staffing levels and already are largely meeting the 30 second wait time requirement we adopt today, deviating from the measurement window we apply to other forms of TRS is no longer necessary.¹¹

The “decade of experience” does not apply to ASL/Global VRS as a recent Fund eligible provider. And ASL/Global VRS’ and other providers’ current ability to “largely meet” the thirty second time metric is based on a monthly and not daily measurement.

A. ASL/Global VRS Is Similarly Situated to Incumbent Providers at the Time The 2005 VRS Speed of Answer Order Was Adopted and Cannot Rely on a “Decade of Experience.”

Of the new SoA standards adopted under the *2013 VRS Reform FNPRM*, the Commission expressly explains,

The Commission’s justification for adopting a larger measurement window for VRS in 2005, when VRS was still a nascent service, was premised on **VRS provider’s lack of experience determining CA staffing levels necessary to meet call demand.**¹²

ASL/Global VRS received conditional grant of Fund eligibility in November 2011.¹³ ASL/Global VRS is one of the newest Fund eligible providers serving the public. The exact conditions applicable to VRS providers in 2005 – limited call history experience, rapid growth, and a changing regulatory framework –apply equally to ASL/Global VRS today. The

¹¹ *2013 VRS Reform FNPRM* at para. 139. Footnotes in original omitted.

¹² *Ibid.* citing to *2005 VRS Speed of Answer Order*, 20 FCC Rcd at 13175-76, ¶ 19 citing to Purple FNPRM Comments at 17-18 [emphasis supplied]. (“The current VRS speed of answer standard requiring 80 percent of calls to be answered within 120 seconds was established at a time of rapid growth in the VRS market, and when VRS was in a more experimental phase of development.”).

¹³ See, e.g. *Notice of Conditional Grant of Application of ASL Services Holdings, LLC for Certification as a Provider of Video Relay Service Eligible for Compensation from the Interstate Telecommunications Relay Service Fund*, CG Docket No. 10-51, DA 11-1902 (Rel. November 15, 2011).

Company cannot fall back on ten years – or even five years - of call distribution data to determine video interpreter staffing levels needed to ensure daily SoA compliance.

ASL/Global VRS' limited call data over the past two years is insufficient to enable calculation of consistently predictable staffing levels on a daily basis given its own rapid growth and changes in the regulatory framework. The Company has calculated that it is capable of meeting the 60 and 30 second SoA requirements as measured on a monthly basis, as discussed further below. Yet the absence of long term data available to other providers, coupled with unpredictability of its growth as a new provider, deprives ASL/Global VRS of the body of data needed to ensure daily compliance. ASL/Global is unique in this regard.

The Commission has expressly predicated adoption of a daily SoA measurement primarily on provider experience determining video interpreting staffing levels necessary to meet call demand. ASL/Global VRS' now requests that the Commission accord the Company limited additional time to develop the data that the Commission has determined is available to other providers.

B. “Largely meeting” the Thirty Second SoA Wait Time Metric Measured Monthly Does Not Guarantee Daily Compliance In the Absence of Meaningful Call Data or High Staffing Costs.

The Commission also predicated the daily SoA measurement on a determination that providers are “largely meeting” a 30 second wait time now adopted by the Commission. Indeed, the record reflects that VRS providers have been meeting achieving 30 second or less.¹⁴ ASL/Global VRS is one of the VRS providers that have consistently achieved 30 second or less wait times. Yet a 30 second or less wait time has been achieved under the previous monthly SoA compliance measurement. It is entirely unclear that this achievement can be accomplished on a

¹⁴ 2013 VRS Reform FNPRM at para. 137 citing to Consumer Groups FNPRM Reply Comments at 4.

daily basis in the absence of long standing historical demand and growth data and/or assumption of exceptional staffing costs.

Over the past four months, ASL/Global VRS' initiatives to attract subscribers have begun bearing fruit. The rate of increase has been significant, albeit unpredictable.¹⁵ The Company's growth in subscribers and resulting call volumes have required ASL/Global VRS to continually adjust staffing levels and hire more video interpreters to meet SoA requirements and growing customer demand.¹⁶

Nevertheless, the Company's growth rate is highly unpredictable. The existing growth rate could rise precipitously as new marketing initiatives and the Commission's interoperability initiatives are implemented. Further, ASL/Global VRS has less than two years' experience with call volume spikes resulting from local or regional emergencies or events outside of the Company's control.

Despite the wide fluctuations in calling volume to date, ASL/Global VRS has successfully met SoA requirements based on current cumulative call data and monthly measurement. The Company cannot ensure that it is capable of meeting the phased in shorter SoA requirements *if* measured daily with certainty until more demand data becomes available. Monthly SoA measurement has provided a degree of flexibility needed to account for call

¹⁵ ASL/Global VRS' experienced a growth rate of [REDACTED] in first quarter 2013 over fourth quarter 2013, and [REDACTED] in second quarter 2013 over first quarter 2013. To be sure, the Company exceeded growth projections which auditors maintained were overly optimistic.

¹⁶ The hiring of qualified tri-lingual video interpreters to meet growing has itself proven challenging as ASL/Global VRS has addressed. *See, e.g. In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Comments of ASL Services Holdings* (August 19, 2013) at page 18. "Added demands of an increase in Spanish language callers using relay services with the benefit of expanded outreach efforts will also exacerbate challenges of meeting staffing needs. Although ASL/Global VRS anticipates that it will continue to attract and develop high quality tri-lingual interpreters, the Company is concerned that its ability to meet the new answer time metric could potentially be compromised if additional tri-lingual Video Interpreters become unavailable for employment, despite the Company's current efforts to attract and develop additional qualified individuals to the field and anticipate future demand. [footnotes in original omitted]."

volume fluctuation the Company anticipates through its marketing initiatives. This flexibility will be lost under a daily SoA compliance measurement and will place the Company at an untenable financial risk of overstaffing or penalty assessments.

ASL/Global requires a minimum of an additional year of call and growth data to obtain meaningful call data on which predictable and sustainable staffing calculations can be based if measured daily. It cannot amass such data in the scant two months left until the daily measurement requirements become effective. ASL/Global requests the same ability to develop meaningful call and growth data that has been accorded to the incumbent providers who are its competitors.

III. ASL/Global VRS's Temporary Waiver Request Is In Keeping With Its Obligation to Serve as a Fiscally Responsible and Viable VRS Provider.

Fiscal responsibility is a tenant of any successful enterprise, and an imperative to Fund sustainability. ASL/Global VRS' initial success has in large measure been built upon maintaining fiscally responsible management practices and acting in a fiscally prudent manner. The Company's request for temporary waiver of the daily SoA compliance measurement and the attendant penalty assessments in favor of monthly measurement is predicated on its intent to remain a fiscally responsible VRS provider.

Unless a temporary waiver of the daily SoA compliance measurement is granted, the Company will effectively be compelled to act in a fiscally *irresponsible* manner to comply or risk the financial impact of non-compliance. Daily SoA compliance compels ASL/Global VRS as the newest Fund eligible provider, to choose between two financially high risk alternatives: 1) overstaffing without a direct correlation to long standing established historic demand and growth data available to other providers and its unpredictable growth; or 2) inadvertent understaffing and risk withholding of Fund reimbursements every day that projected staffing levels do not

meet call demand. Neither alternative is fiscally responsibility or viable. The impact of either alternative is further exacerbated by exceptional costs of recruiting and employing tri-lingual employees.

Due to a lack of long standing historical call data and ASL/Global VRS's efforts to build its subscriber base consistent with the Commission's own expectation for new providers, the Company must rely on existing short term demand and growth data to calculate proper staffing levels. The lack of long standing historical data introduces far more variables, unknowns, and risk than faced by other providers. As stated *supra*, the Company currently meets, and has projected with certainty that it will meet, staffing levels for anticipated demand for the phased in SoA response time if measured on a monthly basis. To meet projected demand measured on a daily basis, the Company must factor interrelated *presumptions* for demand, growth, and unanticipated calling spikes outside of the Company's control. It must then factor in a high margin of error to account for the significant risk of calculating staffing incorrectly to meet demand on any given day. This compels the Company to needlessly overstaff to compensate for a high margin of risk needed to ensure daily compliance. Such overstaffing would increase the probability of meeting daily demand under the new SoA metrics and mitigate penalty risk. Yet overstaffing also forces the Company to assume significant costs of compensating interpreters to sit idly by and waste valuable interpreter time when call volumes are low to avoid non-compliance penalties.

ASL/Global VRS' risk in overstaffing is exacerbated by the higher cost of attracting employing, and training trilingual video interpreters. ASL/Global VRS has well documented the particular challenges and costs associated with serving the English and Spanish

speaking public.¹⁷ The added costs of attracting, employing, and training trilingual video interpreters, only makes the financial risk of overstaffing even more acute for ASL/Global VRS. This compels the Company to assume even greater staffing costs without sufficient historical demand and growth data on which such costs would otherwise be reasonably based.

Cutting the margin for error, e.g. reducing staffing levels, poses an equally risky and financially unsound practice. If ASL/Global VRS calculates staffing incorrectly, e.g. if its projections and error margins result in understaffing for actual demand, it risks loss of reimbursement for non-compliance for an entire day under the current policy. Though statistically the Company's likelihood of meeting demand increases over time as it gains more data, frequent loss of reimbursement for non-compliance on a daily basis is neither fiscally responsible, nor moreover, sustainable. The impact is even more pronounced in the short term for an emerging provider such as ASL/Global VRS. Missing daily SoA metrics could spell financial disaster for the Company if failing to meet SoA, even if only periodically in the first few months of the daily SoA compliance measurement.

Ultimately, the daily measurement requirement precludes the Company from acting in a financially responsible manner. The daily SoA measurement and penalty assessments in the absence of long standing historical demand data and unprecedented growth, imposes significant financial and operational risk,, with little countervailing public benefit. Absent a waiver, the Company must assume risks that no emerging enterprise would responsibly take.

¹⁷ See *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, *Comments of ASL Services Holdings, LLC* (March 9, 2012) at page 28: "These costs [of providing Spanish VRS] are further exacerbated in light of the exceptionally limited pool of native Spanish CAs." More than 9000 individuals are known to be RID certified video interpreters as compared to some less than 20 Texas BEI-certified tri-lingual Video Interpreters; *Comments of ASL Services Holdings, LLC* (August 19, 2013) at page 18:

IV. ASL/Global VRS's Temporary Waiver Request Has No Impact on the Public, the Company's Subscribers, or on Fund Sustainability

ASL/Global VRS has consistently complied with the Commission's SoA requirements. Under the requested waiver, the Company has calculated that it can remain compliant with the SoA requirements \ as measured today. As the instant waiver request pertains to the new compliance measurement, he Company's request for temporary waiver of the daily SoA measurement requirement and attendant non-compliance penalty assessments has no impact on the public. The requested waiver only affects how the Company's SoA compliance is measured. Waiver of the daily SoA compliance measurement will be entirely transparent to subscribers. And Subscribers will continue to receive continually improving response times as the Company refines staffing algorithms based on more demand and growth data.

Rejection of the Company's waiver request will, however, adversely impact ASL/Global VRS' subscribers. As has been stressed, rejection of the requested waiver places the Company at severe risk of significantly increased staffing costs or non-compliance penalties. The financial impact of either alternative will further limit the Company's ability to attract, employ, and properly train additional video interpreters. This situation creates the potential for a downward spiral of less funding for interpreters, slower SoA, increased penalties. Taken to a logical conclusion, the Company would be unable to provide service altogether. Spanish language speaking subscribers would be particularly affected if this were to occur.

And the waiver request has no impact on Fund sustainability. ASL will continue to be compensated for the service it providers under the newly adopted, more harmonized SoA metrics, as it has. ASL will continue to be penalized for non-performance should it fail to meet SoA metrics, albeit under a monthly SoA measurement, also with no impact on the Fund.

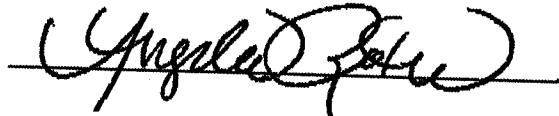
V. Conclusion

ASL/Global VRS requests a temporary, one year waiver of the daily SoA measurement requirement and attendant non-compliance penalty assessments adopted in Sections 64.604(b)(2)(iii)(A)(2) and (3) of the Commission's rules, on an expedited basis. As a new Fund eligible provider the Company lacks the historic demand and growth data available to other providers on which the Commission predicated the daily SoA compliance measurement. ASL/Global VRS requests a waiver of the daily SoA compliance measurement and non-compliance penalty assessments to develop demand data reflective of the Company's operation, rapid growth, and potential for unanticipated demand. Yet the Company has insufficient demand and growth data to ensure daily compliance, and must otherwise depart from its financially responsible management practices and assume significant cost and risk to comply absent a waiver. For the foregoing reasons, ASL/Global VRS respectfully requests a temporary one year waiver of Sections 64.604(b)(2)(iii)(A)(2) and (3) of the Commission's rules.

Respectfully submitted this 24th day of October, 2013,

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